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30 JAN 2008

HOWREY LLP
C/O IP DOCKETING DEPARTMENT
2941 FAIRVIEW PARK DR, SUITE 200
FALLS CHURCH, VA 22042-2924

In re Application of KIM et al	:	
U.S. Application No.: 10/505,328	:	
PCT Application No.: PCT/KR02/02033	:	
Int. Filing Date: 31 October 2002	:	DECISION
Priority Date Claimed: 22 February 2002	:	
Attorney Docket No.: 02730.0020.PCUS00	:	
(300602004700)	:	
For: CONSTRUCTION OF NOVEL STRAINS...	:	

This is in response to applicant's "Petition to Withdraw Abandonment Pursuant to MPEP § 711.03(c)IA Failure to Receive Office Action" filed 22 January 2008, which is being treated under 37 CFR 1.181. No petition fee is due.

BACKGROUND

On 31 October 2002, applicant filed international application PCT/KR02/02033, which claimed priority of an earlier Korea application filed 22 February 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 28 August 2003. The thirty-month period for paying the basic national fee in the United States expired on 23 August 2004 (22 August 2004 was a Sunday).

On 23 August 2004, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 21 June 2005, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that a copy of the sequence listing in computer readable form is required.

On 16 November 2005, the agent of record filed a request to withdraw as attorney and a change of correspondence address.

On 25 November 2005, applicant filed a copy of the sequence listing in computer readable form.

On 21 February 2006, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916), which identified errors in the copy of the sequence listing in computer readable form filed 25 November 2005.

On 27 March 2006, applicant filed a substitute copy of the sequence listing in computer readable form.

On 26 April 2007, the DO/EO/US mailed a Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures (Form PCT/DO/EO/922), which identified errors in the copy of the sequence listing in computer readable form filed 27 March 2006.

On 14 November 2007, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the application is abandoned for failure to timely respond to the Notification to Comply mailed 26 April 2007.

On 22 January 2008, applicant filed the present petition under 37 CFR 1.181.

DISCUSSION

The Notification of Defective Response (Form PCT/DO/EO/916) mailed 21 February 2006 set a one month, non-extendable time limit for reply. Although the response to the Notification of Defective Response was timely filed (see certificate of mailing on 21 March 2006), the response contained errors¹ in the sequence listing, and thus did not constitute a proper reply to the Notification of Defective Response. Because a proper reply to the Notification of Defective Response was not furnished within the time limit set by the Notification of Defective Response, the present application became abandoned. Because the application was already abandoned, the Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures (Form PCT/DO/EO/922) was sent in error.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is DISMISSED without prejudice.

The Notification to Comply with Requirements for Patent Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures (Form PCT/DO/EO/922) mailed 26 April 2007 is hereby VACATED.

¹ A copy of the sequence listing error report is attached to this decision.

The Notification of Abandonment (Form PCT/DO/EO/909) mailed 14 November 2007 is hereby VACATED.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision, including preparation and mailing of a corrected Notification of Abandonment (Form PCT/DO/EO/909) which should indicate that the application is abandoned for failure to timely file a proper reply to the Notification of Defective Response (Form PCT/DO/EO/916) mailed 21 February 2006.



Bryan Lin
PCT Legal Examiner
PCT Legal Office

Telephone: 571-272-3303
Facsimile: 571-273-0459

ATTACHMENT: copy of Sequence Listing Error Report

STIC Biotechnology Systems Branch

RAW SEQUENCE LISTING **ERROR REPORT**

The Biotechnology Systems Branch of the Scientific and Technical Information Center (STIC) detected errors when processing the following computer readable form:

Application Serial Number: 10/505,328A
Source: PT
Date Processed by STIC: 4/28/06

THE ATTACHED PRINTOUT EXPLAINS DETECTED ERRORS.

PLEASE FORWARD THIS INFORMATION TO THE APPLICANT BY EITHER:

- 1) INCLUDING A COPY OF THIS PRINTOUT IN YOUR NEXT COMMUNICATION TO THE APPLICANT, WITH A NOTICE TO COMPLY or,
- 2) TELEPHONING APPLICANT AND FAXING A COPY OF THIS PRINTOUT, WITH A NOTICE TO COMPLY

FOR CRF SUBMISSION AND PATENTIN SOFTWARE QUESTIONS, PLEASE CONTACT MARK SPENCER, TELEPHONE: 571-272-2510; FAX: 571-273-0221

TO REDUCE ERRORED SEQUENCE LISTINGS, PLEASE USE THE **CHECKER VERSION 4.4.0 PROGRAM**, ACCESSIBLE THROUGH THE U.S. PATENT AND TRADEMARK OFFICE WEBSITE. SEE BELOW FOR ADDRESS:

<http://www.uspto.gov/web/offices/pac/checker/chkrnote.htm>

Applicants submitting genetic sequence information electronically on diskette or CD-Rom should be aware that there is a possibility that the disk/CD-Rom may have been affected by treatment given to all incoming mail.

Please consider using alternate methods of submission for the disk/CD-Rom or replacement disk/CD-Rom.

Any reply including a sequence listing in electronic form should NOT be sent to the 20231 zip code address for the United States Patent and Trademark Office, and instead should be sent via the following to the indicated addresses:

1. EFS-Bio (<<http://www.uspto.gov/ebc/efs/downloads/documents.htm>> , EFS Submission User Manual - ePAVE)
2. U.S. Postal Service: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450
3. Hand Carry, Federal Express, United Parcel Service, or other delivery service (EFFECTIVE 01/14/05):
U.S. Patent and Trademark Office, Mail Stop Sequence, Customer Window, Randolph Building, 401 Dulany Street, Alexandria, VA 22314

Revised 01/10/06



PCT

RAW SEQUENCE LISTING

DATE: 04/28/2006

PATENT APPLICATION: US/10/505,328A

TIME: 09:38:57

Input Set : A:\Sequence.txt

Output Set : N:\CRF4\04282006\J505328A.raw

2 <110> APPLICANT: Korea Advanced Institute of Science and Technology
 4 <120> TITLE OF INVENTION: CONSTRUCTION OF NOVEL STRAINS CONTAINING MINIMIZING
 5 GENOME BY Tn5-COUPLED Cre/loxP EXCISION SYSTEM
 7 <130> FILE REFERENCE: 02730.0020.PCUS00
 9 <140> CURRENT APPLICATION NUMBER: 10/505,328A
 C--> 11 <141> CURRENT FILING DATE: 2004-08-23
 11 <150> PRIOR APPLICATION NUMBER: PCT/KR02/02033 -
 12 <151> PRIOR FILING DATE: 2002-10-31
 14 <150> PRIOR APPLICATION NUMBER: KR 10-2002-0009647
 15 <151> PRIOR FILING DATE: 2002-02-22
 17 <160> NUMBER OF SEQ ID NOS: 13
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 27 <223> OTHER INFORMATION: chemically synthesized TnKGloxP
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 37 gtcccgctca gaagaactcg tcaagaaggg gatagaaggg gatgcgctgc gaatcgggag 240
 39 cggcgatacc gtaaagcacg aggaagcggg cagccccattc gccgcccaagc tcttcagcaa 300
 41 tatcacgggt agccaacgct atgtcctgat agcgggtccgc cacaccacgc cggccacagt 360
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 45 gggtcacgac gagatcctcg ccgtcgggca tccgcgcctt gagcctggcg aacagttcgg 480
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 49 tccgagtacg tgctcgctcg atgcgatgtt tcgcttggtg gtcgaatggg caggtagccg 600
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(pg. 5)

RAW SEQUENCE LISTING

PATENT APPLICATION: US/10/505,328A

DATE: 04/28/2006

TIME: 09:38:57

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109 agatgtgtat aagagacagc tgcattaatg aatcgggcaa cgcgcgggga gaggcggttt 2400
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117 <213> ORGANISM: Artificial Sequence
119 <220> FEATURE:
120 <223> OTHER INFORMATION: chemically synthesized TnCloxP
123 <400> SEQUENCE: 2
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128 taaaaatgaa gttttaaatc aatctaaagt atatatgagt aaacttggtc tgacagttac 180
130 caatgcttaa tcagtgggc accaataact gccttaaaaa aattacgccc cgccctgcca 240
132 ctcactgcag tactgttgta attcattaag cattctgcgc acatggaagc catcacagac 300
134 ggcattgatg acctgaatcg ccagcggcat cagcaccttg tcgccttgcg tataatattt 360
136 gccatgggtg aaaacggggg cgaagaagtt gtccatattg gccacgttta aatcaaaact 420
138 ggtgaaactc acccagggat tggctgagac gaaaaacata ttctcaataa accctttagg 480
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170 gagtcgacct gcaggcatgc aagcttcagg gttgagatgt gtataagaga cagctgcatt 1440
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 DATE: 04/28/2006
 TIME: 09:38:57

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 Output Set: N:\CRF4\04282006\J505328A.raw

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233 cgagcacagc tgcgcaagga acgcccgtcg tggccagcca cgatagccgc gctgcctcgt 660
235 cttggagttc attcagggca ccggacaggt cggctctgac aaaaagaacc gggcgccct 720
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250 <212> TYPE: DNA
251 <213> ORGANISM: Artificial Sequence
253 <220> FEATURE:
254 <223> OTHER INFORMATION: chemically synthesized GFP gene
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RAW SEQUENCE LISTING

PATENT APPLICATION: US/10/505,328A

DATE: 04/28/2006

TIME: 09:38:57

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Output Set : N:\CRF4\04282006\J505328A.raw

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264 ctgctagttg aacggatcca tcttcaatgt tgtggcgaat tttgaagtta gctttgattc      240
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268 tgtgtccgag aatgtttcca tcttctttaa aatcaatacc ttttaactcg atacgattaa      360
270 caagggtatc accttcaaac ttgacttcag cacgcgtcct gtagttcccg tcatctttga      420
272 aagatatagt gcgttcctgt acataacctt cgggcatggc actcttgaaa aagtcatgcc      480
274 gtttcatatg atccggataa cgggaaaagg attgaacacc ataagagaaa gtagtgacaa      540
276 gtgttggcca tggaacaggt agttttccag tagtgcaaat aaatttaagg gtaagttttc      600
278 cgtatgttgc atcaccttca cctctccac tgacagaaaa tttgtgcca ttaacatcac      660
280 catctaattc aacaagaatt gggacaactc cagtgaagg ttcttctcct ttactcattt      720
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286 cgagccggaa gcataaagt taaagcctgg ggtgcctaag gagtgagcta actcacatta      900
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294 <213> ORGANISM: Artificial Sequence
296 <220> FEATURE:
297 <223> OTHER INFORMATION: chemically synthesized CmR gene
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325 tgccattggg atatatcaac ggtggtatat ccagtgattt ttttctccat tttagcttcc      780
327 ttagctcctg aaaatctcga taactcaaaa aatacgcccg gtagtgatct tatttcatta      840
329 tggtgaaagt tggaacctct tacgtgccga tcaacgtctc attttcgcca aaagttggcc      900
331 cagggcttcc cggtatcaac agggacacca ggatttattt attctgcgaa gtgatcttcc      960
333 gtcacaggtg tttattcggc gcaaagtgcg tcgggtgatg ctgccaaact actgatttag      1020
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339 <211> LENGTH: 19
340 <212> TYPE: DNA
341 <213> ORGANISM: Artificial Sequence
343 <220> FEATURE:
344 <223> OTHER INFORMATION: chemically synthesized primer-pMODFP-1
347 <400> SEQUENCE: 8
348 attcaggctg cgcaactgt
351 <210> SEQ ID NO: 9

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19

RAW SEQUENCE LISTING

DATE: 04/28/2006

PATENT APPLICATION: US/10/505,328A

TIME: 09:38:57

Input Set : A:\Sequence.txt

Output Set: N:\CRF4\04282006\J505328A.raw

352 <211> LENGTH: 22
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354 <213> ORGANISM: Artificial Sequence
356 <220> FEATURE:
357 <223> OTHER INFORMATION: chemically synthesized primer-pMODRP-1
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364 <210> SEQ ID NO: 10
365 <211> LENGTH: 28
366 <212> TYPE: DNA
367 <213> ORGANISM: Artificial Sequence
369 <220> FEATURE:
370 <223> OTHER INFORMATION: chemically synthesized primer-Tn5Ext
373 <400> SEQUENCE: 10
374 agcatacatt atacgaagtt atattaag 28
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378 <211> LENGTH: 35
379 <212> TYPE: DNA
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405 <212> TYPE: DNA
406 <213> ORGANISM: Artificial Sequence
408 <220> FEATURE:
409 <223> OTHER INFORMATION: chemically synthesized primer-Tn5Int
412 <400> SEQUENCE: 13
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pls explain "N" locations. 35

See error explanation on page 20

7.
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RAW SEQUENCE LISTING ERROR SUMMARY DATE: 04/28/2006
PATENT APPLICATION: US/10/505,328A TIME: 09:38:58

Input Set : A:\Sequence.txt
Output Set: N:\CRF4\04282006\J505328A.raw

Please Note:

Use of n and/or Xaa have been detected in the Sequence Listing. Please review the Sequence Listing to ensure that a corresponding explanation is presented in the <220> to <223> fields of each sequence which presents at least one n or Xaa.

Seq#:11; N Pos. 21,22,23,24,25,26,27,28,29,30

VARIABLE LOCATION SUMMARY

PATENT APPLICATION: US/10/505,328A

DATE: 04/28/2006

TIME: 09:38:58

Input Set : A:\Sequence.txt

Output Set: N:\CRF4\04282006\J505328A\raw

Use of n's or Xaa's (NEW RULES):

Use of n's and/or Xaa's have been detected in the Sequence Listing.

Use of <220> to <223> is MANDATORY if n's or Xaa's are present.

in <220> to <223> section, please explain location of n or Xaa, and which residue n or Xaa represents.

ERROR explanation: 2

Seq#:11; N Pos. 21,22,23,24,25,26,27,28,29,30

✓

VERIFICATION SUMMARY

PATENT APPLICATION: US/10/505,328A

DATE: 04/28/2006

TIME: 09:38:58

Input Set : A:\Sequence.txt

Output Set: N:\CRF4\04282006\J505328A.raw

L:11 M:271 C: Current Filing Date differs, Replaced Current Filing Date
L:387 M:258 W: Mandatory Feature missing, <221> Tag not found for SEQ ID#:11
L:387 M:258 W: Mandatory Feature missing, <222> Tag not found for SEQ ID#:11
L:387 M:341 W: (46) "n" or "Xaa" used, for SEQ ID#:11 after pos.:0